

CA20N  
LR  
-57A51


Ontario. Labour Relations  
Board

Analysis of applications for  
consent to prosecute under  
labour relations...









Digitized by the Internet Archive  
in 2022 with funding from  
University of Toronto

<https://archive.org/details/31761115474165>



*Ontario Labour relations board*  
*General publications*  
ANALYSIS OF APPLICATIONS FOR CONSENT TO PROSECUTE UNDER  
LABOUR RELATIONS LEGISLATION IN ONTARIO

1. Statutory Background

Present-day labour relations legislation prohibits certain courses of conduct which have come to be known as "unfair practices". In Ontario, persons who engage in these practices have been and are subject to prosecution in the courts, upon consent in that behalf being given by an appropriate administrative authority. Under the Wartime Labour Relations Regulations (P.C. 1003 of February 17, 1944), consent had to be obtained from the Labour Relations Board. Section 45 of the Regulations declared that

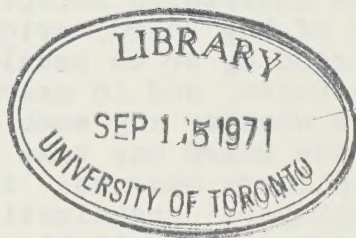
No prosecution for an offence under these regulations shall be instituted except by or with the consent of the Board, evidenced by a certificate signed by or on behalf of the chairman of the Board, and in exercising its discretion as to whether any such consent should be granted, the Board may take into consideration disciplinary measures that have been taken by an employers' organization or a trade union or employees' organization against the accused.

This provision remained in effect until December 9, 1948, when The Labour Relations Act, 1948, c.51, was proclaimed. The regulations issued under the last-named statute provided as follows:

46(1) No prosecution for an offence under these Regulations shall be instituted except with the consent in writing of the Minister [of Labour].

The Labour Relations Act, 1950, c.34 (now R.S.O. 1950, c.194) reverted to the procedure established under the 1944 legislation. Section 65 of the 1950 Act provided

No prosecution for an offence under this Act





shall be instituted except with the consent in writing of the Board.

The section was amended by The Labour Relations Amendment Act, 1957, c.57, to make unnecessary the obtaining of the Board's consent in case of a refusal or failure to comply with an order of the Minister made under section 58.

## 2. Statistical Analysis

The statistical and other information set out below covers the periods during which authority to consent to the institution of prosecutions has been vested in the Board. Details of applications for consent to prosecute for the period December 8, 1948, to September 1, 1950, are not held by the Board since authority in this period was vested in the Minister of Labour.

Table 1

Applications for Consent to Prosecute and their Disposition  
To December 8, 1948

Applicant	Total	Withdrawn- Before Hearing	Withdrawn- After Hearing	Granted	Dis- missed
Employer	7	1	2	1	3
Trade union	61	12	25	9	15
Totals	68	13	27	10	18

It should be noted that, in the 61 applications made by trade unions, there are included applications made for procedural





reasons by individuals on behalf of trade unions.

Applications by employers: Of the seven applications filed by employers in the period covered by Table 1, all were made on or after May 29, 1947, five of them having been made in the period April 1, 1948 to December 8, 1948. All seven applications related to alleged unlawful strikes and consent to prosecute was granted in one of them.

Applications by trade unions: In nine instances in which consent was granted to unions to institute prosecutions against employers, the offences alleged were:

interference with unions	3
interference with employees' rights	2
refusal to bargain collectively	3
refusal to submit a grievance dispute to arbitration	1
improper alteration of working conditions	1
	<u>10</u>

In one application, the Board granted leave to prosecute for refusal to bargain collectively and for alteration of working conditions.





Table 2

Applications for Consent to Prosecute and their DispositionSeptember 1, 1950 - March 31, 1957.

Applicant	Totals	Withdrawn- Before Hearing	Withdrawn- After Hearing	Granted	Dis- missed
<u>Sept. 1, 50-Mar. 31, 52</u>					
Employer	1				
Trade union	20	8	3	6	3
<u>Apr. 1, 52-Mar. 31, 53</u>					
Employer	1	1			
Trade union	29	8	9	7	5
<u>Apr. 1, 53-Mar. 31, 54</u>					
Employer	57	44		3	10
Trade union	24	11	2	9	2
<u>Apr. 1, 54-Mar. 31, 55</u>					
Employer	34	17		7	10
Trade union	17	5	4	3	5
<u>Apr. 1, 55-Mar. 31, 56</u>					
Employer	21	21			
Trade union	20	3	17	2	8
<u>Apr. 1, 56-Mar. 31, 57</u>					
Employer	138	58	77		3
Trade union	12	2	4	2	4
<u>Totals:</u>					
Employer	252	141	77	10	24
Trade union	132	37	39	29	27
				39	51

ion applications include applications which for procedural

made by individuals on behalf of unions





Applications by employers: In the period covered by Table 2, the ten applications, in which employers were granted leave to prosecute, all pertained to unlawful strikes.

Applications by trade unions: Over the same period, in the twenty-nine instances in which consent was given to trade unions, the offences alleged were:

interference with trade unions	10
interference with employees' rights	13
refusal to bargain collectively	1
alteration of working conditions	
contrary to section 53 of the Act	18
refusal to submit a grievance to arbitration	4
unlawful lockout	2
	<u>48</u>

The difference between the number of applications in which leave was granted to trade unions shown in Table 2 (29) and the number of offences (48) is accounted for by the fact that, in each of nine instances, leave was granted in respect of three offences, and in one instance in respect of two offences.

3. Analysis of Applications for Consent to Prosecute in terms of Industrial disputes or "Cases", September 1, 1950 - March 31, 1957.

The data presented in Table 2 shows the work load of the Board in respect of applications for consent to prosecute. Each individual application has to be processed separately and, in many instances, has to be heard and dealt with separately. However, an applicant may file either one or a number of applications in connection with one incident or





closely related series of incidents. Thus, when an employer seeks to prosecute a number of his employees on the ground that they engaged in an allegedly unlawful strike, he may file one application naming, say, ten employees as respondents, or he may file ten applications each naming one employee as respondent. Similarly, a trade union requesting consent to prosecute an employer who, the union alleges, interfered with the union in its organizational activities, may file one application setting out several counts or several separate applications each setting out one count. Although the grouping together of a number of applications and treating them as one industrial incident or dispute must, because of the great variety of situations that arise, be done in somewhat arbitrary fashion, a careful analysis of the applications shown in Table 2 would indicate that the 384 applications relate to 132 industrial incidents or disputes, in 30 of which an employer sought relief and in 102 a trade union sought relief.

The following examples will illustrate the manner in which the applications have been treated in arriving at the figures given above.

- (1) In fiscal year 1952-3, fifteen applications were made by a union which had a master agreement with a number of employers. The offense alleged by the union was the same in each of the applications. Five of the applications were withdrawn before the hearing, five after the hearing and consent to prosecute was granted in five applications.





(2) In fiscal 1953-4, an employer filed eleven applications in connection with a strike of his employees. The Board dismissed nine of the applications and granted consent in two others.

(3) In the same year, a trade union made four applications alleging that certain offences had been committed by an employer during the negotiations for a collective agreement. One application was dismissed and the Board granted consent in two applications for an offence under section 45 and in one application for an offence under section 53 of the Act.

Each of these groups of applications has been counted as one industrial incident or dispute in arriving at the figure 132.

#### 4. Proceedings Subsequent to the Granting of Consent

Proceedings in the courts were initiated in about one-third of the instances in which the Board gave its consent to the institution of a prosecution. From information obtained from counsel who appeared before the Board on the 39 applications in which consent was granted, it would appear that in 23 instances a satisfactory settlement of the issues in dispute was arrived at after consent was granted but before a prosecution was instituted. Table 4 summarizes in tabular form the ultimate results in the applications in which consent to the institution of a prosecution was granted by the Board during the period under review.





TABLE 4Disposition of Applications Subsequent to the  
Granting of ConsentSeptember 1, 1950 to March 31, 1957

<u>Result</u>	<u>No. applications</u>
Total granted	39
Issues settled before prosecution	23
No proceedings after consent	2
No information available	1
Prosecution initiated	13
Defendant convicted	8
Prosecution dismissed	2
Withdrawn	3















3 1761 11547416 5